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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**VIKKI SIMON,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**OCWEN LOAN SERVICING,
LLC,**

Defendant.

Case No.: '13CV1120 BEN DHB

**CLASS ACTION COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

1 1. VIKKI SIMON (“Plaintiff”) brings this Class Action Complaint for
2 damages, injunctive relief, and any other available legal or equitable remedies,
3 resulting from the illegal actions of OCWEN LOAN SERVICING, LLC
4 (“Defendant”), in negligently and/or willfully contacting Plaintiff on Plaintiff’s
5 cellular telephone, in violation of the Telephone Consumer Protection Act, 47
6 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff
7 alleges as follows upon personal knowledge as to herself and her own acts and
8 experiences, and, as to all other matters, upon information and belief, including
9 investigation conducted by her attorneys.
10

11 2. The TCPA was designed to prevent calls and text messages like the
12 ones described herein, and to protect the privacy of citizens like Plaintiff.
13 “Voluminous consumer complaints about abuses of telephone technology – for
14 example, computerized calls dispatched to private homes – prompted Congress to
15 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

16 3. In enacting the TCPA, Congress intended to give consumers a choice
17 as to how corporate similar entities may contact them, and made specific findings
18 that “[t]echnologies that might allow consumers to avoid receiving such calls are
19 not universally available, are costly, are unlikely to be enforced, or place an
20 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In
21 support of this, Congress found that
22

23 [b]anning such automated or prerecorded telephone
24 calls to the home, except when the receiving party
25 consents to receiving the call or when such calls are
26 necessary in an emergency situation affecting the health
27 and safety of the consumer, is the only effective means
28 of protecting telephone consumers from this nuisance
and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call...” Id. at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.

5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

7. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant is subject to personal jurisdiction in the County of San Diego, State of California.

PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation is in Delaware. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of San Diego, and within this judicial district.

FACTUAL ALLEGATIONS

10. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

11. Defendant is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

12. At all times relevant Defendant conducted business in the State of California and in the County of San Diego, within this judicial district.

13. Beginning sometime on or around 2013, Defendant began to utilize Plaintiff’s cellular telephone number, ending in 9105, in an attempt to collect allegedly unpaid sums of money for Plaintiff’s home loan. However, Plaintiff was and continues to be current on her home loan obligations.

14. During this time, Defendant placed its calls to Plaintiff’s cellular telephone on a virtual daily basis, often placing several calls to Plaintiff in a single day.

1 15. On several occasions, Plaintiff answered Defendant's calls and was
2 immediately greeted with "dead air" for several seconds until the call was
3 transferred to a live human agent.

4 16. On several occasions, Plaintiff answered Defendant's calls and was
5 immediately greeted with a pre-recorded message advising Plaintiff to stay on the
6 line to speak with a representative of Defendant.

7 17. On several occasions, Plaintiff remained on the line until she could
8 speak with a live human agent and advised Defendant that she was not delinquent
9 on her home loan and requested that Defendant cease calling her cellular
10 telephone.

11 18. Despite this, Defendant continued to place calls to Plaintiff's cellular
12 telephone seeking to collect the erroneous debt allegedly owed.

13 19. As such, on April 3, 2013, Plaintiff sent a written correspondence to
14 Defendant's West Palm Beach, Florida address via FedEx demanding that
15 Defendant cease calling her cellular telephone.

16 20. Defendant received Plaintiff's correspondence on April 5, 2013 at
17 approximate 10:16am and was signed for by a "C. Dixon."

18 21. Despite having received Plaintiff's written demand for a cease of all
19 calls to her cellular telephone, Defendant continued to place collection calls to
20 Plaintiff.

21 22. Specifically, Defendant called Plaintiff's cellular telephone on: April
22 5, 2013, April 6, 2013, April 7, 2013, April 8, 2013 (2 times), April 9, 2013 (2
23 times) and April 10, 2013 (2 times).

24 23. The calls Defendant placed to Plaintiff's cellular telephone were
25 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
26 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).
27
28

1 24. The telephone number that Defendant, or its agents, called was
2 assigned to a cellular telephone service for which Plaintiff incurs a charge for
3 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

4 25. These telephone calls constituted calls that were not for emergency
5 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

6 26. As Plaintiff had demanded, in writing, that Defendant cease placing
7 all calls to her cellular telephone, which Defendant received on April 5, 2013 at
8 no time after April 5, 2013 did Plaintiff provide Defendant or its agents with prior
9 express consent to receive autodialed calls to her cellular telephone, pursuant to
10 47 U.S.C. § 227 (b)(1)(A).

11 27. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
12 § 227(b)(1).

13
14 **CLASS ACTION ALLEGATIONS**

15 28. Plaintiff brings this action on behalf of herself and on behalf of and
16 all others similarly situated (“the Class”).

17 29. Plaintiff represents, and is a member of, the Class, consisting of All
18 persons within the United States who received any telephone calls from
19 Defendant to said person’s cellular telephone made through the use of any
20 automatic telephone dialing system or an artificial or prerecorded voice and such
21 person had not previously consented to receiving such calls within the four years
22 prior to the filing of this Complaint

23 30. Defendant and its employees or agents are excluded from the Class.
24 Plaintiff does not know the number of members in the Class, but believes the
25 Class members number in the thousands, if not more. Thus, this matter should be
26 certified as a Class action to assist in the expeditious litigation of this matter.

27 31. Plaintiff and members of the Class were harmed by the acts of
28 Defendant in at least the following ways: Defendant, either directly or through its

1 agents, illegally contacted Plaintiff and the Class members via their cellular
2 telephones, thereby causing Plaintiff and the Class members to incur certain
3 cellular telephone charges or reduce cellular telephone time for which Plaintiff
4 and the Class members previously paid, and invading the privacy of said Plaintiff
5 and the Class members. Plaintiff and the Class members were damaged thereby.

6 32. This suit seeks only damages and injunctive relief for recovery of
7 economic injury on behalf of the Class, and it expressly is not intended to request
8 any recovery for personal injury and claims related thereto. Plaintiff reserves the
9 right to expand the Class definition to seek recovery on behalf of additional
10 persons as warranted as facts are learned in further investigation and discovery.

11 33. The joinder of the Class members is impractical and the disposition
12 of their claims in the Class action will provide substantial benefits both to the
13 parties and to the court. The Class can be identified through Defendant's records
14 or Defendant's agents' records.

15 34. There is a well-defined community of interest in the questions of law
16 and fact involved affecting the parties to be represented. The questions of law
17 and fact to the Class predominate over questions which may affect individual
18 Class members, including the following:

- 19
- 20 a) Whether, within the four years prior to the filing of this Complaint,
21 Defendant or its agents placed any calls to the Class (other than a
22 call made for emergency purposes or made with the prior express
23 consent of the called party) to a Class member using any automatic
24 dialing system to any telephone number assigned to a cellular phone
25 service;
 - 26 b) Whether Plaintiff and the Class members were damaged thereby, and
27 the extent of damages for such violation; and
28

1 c) Whether Defendant and its agents should be enjoined from engaging
2 in such conduct in the future.

3 35. As a person that received numerous calls from Defendant via an
4 automated telephone dialing system and/or an artificial or pre-recorded voice
5 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
6 typical of the Class. Plaintiff will fairly and adequately represent and protect the
7 interests of the Class in that Plaintiff has no interests antagonistic to any member
8 of the Class.

9 36. Plaintiff and the members of the Class have all suffered irreparable
10 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a
11 class action, the Class will continue to face the potential for irreparable harm. In
12 addition, these violations of law will be allowed to proceed without remedy and
13 Defendant will likely continue such illegal conduct. Because of the size of the
14 individual Class member's claims, few, if any, Class members could afford to
15 seek legal redress for the wrongs complained of herein.

16 37. Plaintiff has retained counsel experienced in handling class action
17 claims and claims involving violations of the Telephone Consumer Protection
18 Act.

19 38. A class action is a superior method for the fair and efficient
20 adjudication of this controversy. Class-wide damages are essential to induce
21 Defendant to comply with federal and California law. The interest of Class
22 members in individually controlling the prosecution of separate claims against
23 Defendant is small because the maximum statutory damages in an individual
24 action for violation of privacy are minimal. Management of these claims is likely
25 to present significantly fewer difficulties than those presented in many class
26 claims.
27
28

1 39. Defendant has acted on grounds generally applicable to the Class,
2 thereby making appropriate final injunctive relief and corresponding declaratory
3 relief with respect to the Class as a whole.

4 **FIRST CAUSE OF ACTION**
5 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
6 **PROTECTION ACT**
7 **47 U.S.C. § 227 ET SEQ.**

8 40. Plaintiff incorporates by reference all of the above paragraphs of this
9 Complaint as though fully stated herein.

10 41. The foregoing acts and omissions of Defendant constitute numerous
11 and multiple negligent violations of the TCPA, including but not limited to each
12 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

13 42. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
14 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory
15 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

16 43. Plaintiff and the Class are also entitled to and seek injunctive relief
17 prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**
19 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
20 **TELEPHONE CONSUMER PROTECTION ACT**
21 **47 U.S.C. § 227 ET SEQ.**

22 44. Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 45. The foregoing acts and omissions of Defendant constitute numerous
25 and multiple knowing and/or willful violations of the TCPA, including but not
26 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
27 seq.

28 46. As a result of Defendant's knowing and/or willful violations of 47
U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00

1 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
2 227(b)(3)(C).

3 47. Plaintiff and the Class are also entitled to and seek injunctive relief
4 prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
7 Class members the following relief against Defendant:
8

9 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
10 **TCPA, 47 U.S.C. § 227 ET SEQ.**

11 48. As a result of Defendant's negligent violations of 47 U.S.C. §
12 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory
13 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

14 49. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
15 such conduct in the future.

16 50. Any other relief the Court may deem just and proper.
17

18 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
19 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

20 51. As a result of Defendant's knowing and/or willful violations of 47
21 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00
22 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
23 227(b)(3)(C).

24 52. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
25 such conduct in the future.

26 53. Any other relief the Court may deem just and proper.
27
28

TRIAL BY JURY

54. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted this 10th day of May, 2013.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff